

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DATE FILED: 11/01/13

INDIAN HARBOR INSURANCE COMPANY,

Case No. 12 CIV 5787 (JGK)
ECF Case

Plaintiff,

[PROPOSED] CASE SCHEDULING ORDER

-against-

THE CITY OF SAN DIEGO,

Courtroom: 12B
Judge: Hon. John G. Koeltl

Defendant.

Complaint Filed: July 27, 2012
F.A.C. Filed: August 14, 2012

Pursuant to the Joint 26(f) Conference Report submitted by Plaintiff Indian Harbor Insurance Company (“Indian Harbor”) and Defendant City of San Diego (“City”), the Court hereby orders as follows:

1. Early Summary Judgment Phase. The parties will engage in an early summary judgment phase limited to the issue of whether Indian Harbor is entitled to a judgment of no duty to defend or indemnify, as a matter of law, solely on the grounds of late notice, without a showing of any resulting prejudice, with respect to the claims tendered by the City. This early summary judgment phase will be filed without engaging in any discovery (including initial disclosures) and without making a Fed. R. Civ. Pro. 56(d) argument to postpone decision on the motion(s). The following schedule applies for the motion(s) for summary judgment on the late notice issue:

a. February 1, 2013: deadline for Indian Harbor to file opening motion for summary judgment; the memorandum of law in support shall not exceed 25 pages.

b. February 22, 2013: deadline for City to file opposition to Indian Harbor's motion for summary judgment, which can also serve as a cross-motion for summary judgment at the City's option; the memorandum of law in support shall not exceed 25 pages.

c. March 13, 2013: deadline for Indian Harbor to file reply in support of its motion for summary judgment, which can also serve as an opposition to the City's cross-motion for summary judgment if one has been filed; if the filing serves as a reply only, the memorandum of law in support shall not exceed 10 pages; if the filing serves as a reply and opposition to cross-motion to the City's motion for summary judgment, the memorandum of law in support shall not exceed 25 pages.

d. March 22, 2013: deadline for City to file reply in support of its cross-motion for summary judgment if such cross-motion has been filed; the memorandum of law in support shall not exceed 10 pages. *The surviving party should submit a courtesy copy of all papers to the Court.*

e. Hearing: Hearing on motion(s) for summary judgment.

2. Deferral of Any and All Other Issues. Any and all other issues and activities in the case are deferred pending the outcome of the motion(s) for summary judgment regarding the potentially dispositive late notice issue. The parties shall conduct a further Rule 26(f) conference on other issues and activities within 30 days of a determination of the initial motion(s) for summary judgment regarding the late notice issues and attend a Rule 16 conference on a date set by the Court after receipt of the parties' Rule 26(f) conference report.

3. Initial Disclosures. The parties do not need to exchange initial disclosures at this time and shall meet and confer regarding the exchange of initial disclosures within 30 days of a determination on the initial motion(s) for summary judgment.

4. Discovery Plan. No discovery will be conducted pending an outcome of the early summary judgment phase regarding late notice. The parties will not raise a Rule 56(d) argument during this initial summary judgment phase regarding late notice. The parties shall conduct a further Rule 26(f) conference on other issues and activities within 30 days of a determination on the initial motion(s) for summary judgment regarding the late notice issues.

5. Other Issues.

a. The joining of other parties or amendments to the pleadings will be on order of the Court only.

b. No experts will be disclosed or used for the early summary judgment phase. The parties shall conduct a further Rule 26(f) conference on other issues and activities within 30 days of a determination on the initial motion(s) for summary judgment regarding the late notice issue, which conferences will address expert disclosures and discovery.

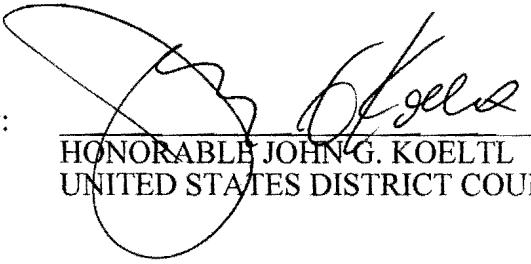
c. No pretrial conference and trial dates will be set at this time.

6. January 10, 2013 Conference. The January 10, 2013 Conference is hereby vacated.

IT IS SO ORDERED.

Dated: January 10, 2013

By:


HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT COURT JUDGE

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